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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 406

HUGH MILLER MERCER, *et al.*,
Appellants,

—against—

ARTHUR I. HEMMINGS, *et al.*,
Appellees.

HERMAN W. BEVIS, *et al.*,
Appellants,

—against—

MARK W. EASTLAND, *et. al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION OF EQUITABLE SECURITIES CORPORATION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF, AMICUS CURIAE

MARVIN SCHWARTZ,
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48 Wall Street,
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November 17, 1967.

IN THE

Supreme Court of the United States

October Term, 1967

No. 406

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—against—

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ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

Equitable Securities Corporation hereby respectfully moves for leave to file a brief *amicus curiae* in this case. The consent of the attorneys for appellants has been obtained. The consent of the attorneys for appellees had not been received at the time of printing hereof.

The interest of Equitable Securities Corporation in this case arises from the fact that it is a substantial under-

writer of securities and a dealer-broker for trading in securities. It is, consequently, vitally interested in averting any impediments to clear and reliable financial reporting by companies that issue securities.

Equitable Securities Corporation makes this motion because it wishes to apprise this Court of the potential adverse impact of the decisions below upon the underwriting of securities and the protection of investors.

November 17, 1967.

Respectfully submitted,

MARVIN SCHWARTZ,
Attorney for Equitable Securities Corporation.

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ON APPEAL FROM THE SUPREME COURT OF FLORIDA

BRIEF OF EQUITABLE SECURITIES CORPORATION, AMICUS CURIAE

Equitable Securities Corporation hereby requests this Court to grant rehearing of its decision of October 23, 1967, granting appellees' motion to dismiss and dismissing the appeal for want of a substantial Federal question, and to note probable jurisdiction and assign the cases for oral argument.

ARGUMENT

Equitable Securities Corporation (hereinafter Equitable) is a securities underwriter and distributor with headquarters in Nashville, Tennessee, and offices in New York City, Philadelphia, Boston, Hartford and eight large Southern and Southwestern cities. Equitable is currently the second-largest brokerage firm in the nation in terms of capitalization, and it is a major underwriter of new issues of securities as well as a major securities broker and dealer. It is a member of the Investment Bankers' Association of America, the National Association of Securities Dealers, the National Security Traders Association and the Midwest Stock Exchange. By the very nature of its business, Equitable is vitally concerned with the adequacy and clarity of financial reporting by companies which issue securities.

The decisions of the Florida courts in the instant appeal may lead to a serious impairment of the financial information furnished investors in the form of audited financial statements of multi-state companies with Florida operations. The Florida statutes and regulations with respect to the practice of accountancy, as interpreted by the Florida courts, require that the auditing work for many such companies must now be divided between the accounting firm auditing such companies' operations in many other states and a firm of Florida accountants. If the out of state firm cannot supervise the Florida work, as seems to be implicit from the Florida decisions, serious questions arise as to its ability to assume responsibility for such work in expressing an opinion as to the financial statements of the whole multi-state enterprise. For many reasons, particularly the requirements of the Securities Act of 1933 and

the responsibilities of underwriters under that Act, such an opinion is essential for the successful marketing of securities and the protection of investors.

What is even more disturbing is the potential impact of the decisions below upon other state agencies regulating the practice of accountancy. If those decisions are not overturned by this Court, there may well be a movement in other states to create similar restrictions which, taken together, would totally fragment the audit work for interstate companies. Such dispersion of responsibility in financial reporting would lead to results contrary to the protection of investors and the national public interest.

CONCLUSION

For the above reasons, Equitable Securities Corporation respectfully urges this Court to grant rehearing, to note probable jurisdiction, and to assign the cases for oral argument.

November 17, 1967.

Respectfully submitted,

MARVIN SCHWARTZ,
Attorney for Equitable Securities Corporation,
48 Wall Street,
New York, N. Y. 10005.